

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ELLEN HIATT WATSON,)	
ROGER C. HILL, ROBERT LANDLES,)	No. 63531-0-I
and 7-LAKES, INC.,)	
)	DIVISION ONE
Respondents,)	
)	
v.)	
)	
SNOHOMISH COUNTY and CRAIG)	
LADISER,)	UNPUBLISHED OPINION
)	
Defendants,)	FILED: April 12, 2010
)	
and)	
)	
BROCK BAKER, RALPH JOHNSON,)	
WILLIAM STOOPS, and DANIEL)	
WICKSTROM,)	
)	
Appellants.)	
_____)	

BECKER, J. — Under Snohomish County general development standards, all lots must conform to the dimensional requirements for the zone in which they are located unless there is an exception elsewhere in the code. The code does make an exception allowing single family residences to be built on substandard lots in the R-5 zone under certain conditions, but there is no exception for duplexes. The fact that duplexes are a permitted use on legal

nonconforming lots in the R-5 zone does not modify the dimensional requirements to which lots must conform in order to be eligible for development. We affirm the trial court's ruling on declaratory judgment that duplexes are not allowed in the R-5 zone on lots smaller than 200,000 square feet.

In April 2008, Snohomish County received 27 building permit applications to build duplexes in Warm Beach, an unincorporated community in northwest Snohomish County. The applications were filed on behalf of Brock Baker and three other property owners (hereafter "Baker"). The applicants owned small contiguous lots that had been legally created a hundred years ago.

The area is now zoned R-5. The general development standards for the R-5 zone in unincorporated Snohomish County are set forth as part of the Snohomish County Code in a table called the Bulk Matrix. The Bulk Matrix generally requires a minimum lot size of 200,000 square foot (approximately five acres) in the R-5 zone. SCC 30.23.030(1). Even if the individual lots in the Baker applications could be combined to make a larger lot that would satisfy health department requirements, the lot for each proposed duplex would be of substandard dimensions for the R-5 zone, that is, less than 200,000 square feet.

Baker sent the county planning department a letter supporting the applications. He did not discuss the minimum lot size specified by the Bulk Matrix. Instead, he emphasized a different code provision, SCC 30.23.240. This code provision allows development of single family dwellings on substandard lots under certain conditions, but it does not mention duplexes. Another code

provision specifically recognizes duplexes as a permitted use in the R-5 zone. Baker asserted that duplexes and other permitted uses could be developed on substandard lots because under SCC 30.23.240, only single family residences were subject to restrictions.

The planning department undertook a review of Baker's interpretation of the code. On July 1, 2008, the county planning director issued an official interpretation agreeing with Baker's position.

On July 21, 2008, Ellen Watson filed a declaratory judgment action against Snohomish County. She, along with other owners of undeveloped substandard lots in the R-5 zone, asked the superior court to declare that the planning department's code interpretation was erroneous, arbitrary, and capricious. In January 2009, the trial court granted leave to Baker to intervene in opposition to Watson's petition.

The trial court, after hearing oral argument in March, issued a judgment in April 2009. The court declared that the county code plainly meant that "duplexes are not allowed on lots smaller than 200,000 square feet":

SCC 30.23.030(1) requires development on all lots to meet the requirements of the bulk matrix unless an exception is provided for in other sections of the Snohomish County Code. SCC 30.23.240, as it existed prior to being amended by Emergency Ordinance No. 08-090, creates an exception for certain single family dwellings, but not duplexes. No other code section creates an exception for duplexes. Therefore, in the R-5 zone, duplexes are not allowed on lots smaller than 200,000 square feet.

Baker appeals.¹ He contends that the plain meaning of the code is that

¹ The County defended the planning director's interpretation in the trial court but does not do so on appeal. The County has limited its participation in this appeal to an

the Bulk Matrix dimensional requirements do not apply to lots of substandard size; or that at a minimum, inconsistencies in the code create an ambiguity that warrants deference to the official interpretation by the county planning director.

This court interprets local ordinances the same as statutes. Sleasman v. City of Lacey, 159 Wn.2d 639, 643, 151 P.3d 990 (2007). The meaning of a statute is a question of law reviewed de novo. The court's fundamental objective is to ascertain and carry out the intent of the legislative body. If the statute's meaning is plain on its face, the court must give effect to that plain meaning as an expression of legislative intent. As part of the determination of whether a plain meaning can be ascertained, it is appropriate to look at the language in the context of the statutory scheme as a whole. The plain meaning is thus discerned from all that the legislative body has said in the statute and related statutes that disclose legislative intent about the provision in question. Dep't of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 9-12, 43 P.3d 4 (2002). "Full effect must be given to the legislature's language, with no part rendered meaningless or superfluous." Sleasman, 159 Wn.2d at 646.

Where statutory language is plain and unambiguous, courts will not construe the statute but will glean the legislative intent from the words of the statute itself, regardless of contrary interpretation by an administrative agency. A statute is ambiguous if "susceptible to two or more reasonable interpretations," but "a statute is not ambiguous merely because different interpretations are conceivable."

Agrilink Foods, Inc. v. Dep't of Revenue, 153 Wn.2d 392, 396, 103 P.3d 1226

issue of attorney-client privilege, which we do not need to reach.

(2005) (citations omitted).

The General Development Standards – Bulk Regulations chapter of the Snohomish County Code is chapter 30.23 SCC. This chapter states a general rule: “All lots and structures shall conform to the requirements listed on the Bulk Matrix, SCC 30.23.030(1), unless modified elsewhere in this title.” SCC 30.23.010(1). The Bulk Matrix is a table detailing the “standard setback, lot coverage, building height, and lot dimension regulations for zones in unincorporated Snohomish County.” SCC 30.23.030. The Bulk Matrix specifies the minimum lot area in the R-5 zone as 200,000 square feet. SCC 30.23.030(1). “The intent and function of the Rural-5 Acre zone is to maintain rural character in areas that lack urban services.” SCC 30.21.025(2)(c).

The code defines “lot” to include lots that met minimum zoning requirements that were in effect when they were created.

“Lot” means a tract or parcel of land created in its present configuration by subdivision, short subdivision, or large tract segregation (recorded and/or approved by the County), a segregation exempt from subdivision requirements, or transfer of ownership prior to September 12, 1972. To be considered a “lot,” each tract or parcel must be of sufficient area and dimension to meet minimum zoning requirements that were in effect at the time the tract or parcel was created, and must meet the access requirements of this title. The term shall not include divisions or descriptions created solely for access purposes.

SCC 30.91L.120. The lots in Baker’s applications satisfied this definition and therefore are “lots” that must conform to the Bulk Matrix requirements.

Baker contends that the general rule that all lots “shall conform to the requirements listed on the Bulk Matrix” applies only to newly created lots, not

legally created preexisting lots. He states that the fundamental problem with applying Bulk Matrix regulations to preexisting legal lots is “the inconsistency in attempting to use the Bulk Matrix to regulate the minimum size of lots that already have an existing size that is less than the minimum.”

The Bulk Matrix sets dimensional requirements for development. SCC 30.23.030. It is not inconsistent for the code to prohibit development on a lot of substandard size and at the same time to recognize the substandard lot as a legal “lot” because it was legally created. There is no conflict and therefore no ambiguity.

The structure of the code as a whole confirms that the Bulk Matrix regulations apply to substandard lots. Several provisions designated as exceptions to the Bulk Matrix requirements do allow for development of some uses on substandard lots. SCC 30.23.030 (“Additional setback and lot area requirements and exceptions are found at SCC 30.23.100 – 30.23.260.”). Notably, SCC 30.23.240—the section upon which Baker principally relies—is itself an exception to the general requirements of the Bulk Matrix. It specifically allows development of single family dwellings on substandard lots, but only under certain conditions:

Use of lots in residential zones for single family dwellings when such lots have substandard area for their present zone is permitted if the lot was legally created and satisfied the lot area and lot width requirements applicable at the time of lot creation; but such lots may be used only in the manner and upon the conditions set forth below: [followed by three subsections imposing conditions]

SCC 30.23.240.² Other exceptions to the prohibition of development on

substandard lots are for development of rural clusters, SCC 30.23.220; utilities, government structures and facilities, SCC 30.23.200; and aggregation of lots to

² It appears that the county has amended this provision several times since this litigation began. All references in this opinion to the code, including SCC 30.23.240, are to the code as it existed at the time Baker filed the duplex applications.

form a building site, SCC 30.23.250. In interpreting an ordinance, full effect “must be given to the legislature’s language, with no part rendered meaningless or superfluous.” Sleasman, 159 Wn.2d at 646. If the dimensional requirements of the Bulk Matrix did not generally apply to substandard lots, the exceptions to the Bulk Matrix noted above would be superfluous.

Again, the general rule is stated as follows: “All lots and structures shall conform to the requirements listed on the Bulk Matrix, SCC 30.23.030(1), unless modified elsewhere in this title.” SCC 30.23.010(1). Baker next argues that the Bulk Matrix requirement of a 200,000 square foot minimum lot size is “modified elsewhere” in the title by a provision in the use chapter of the code.

The chapter regulating the uses permitted or prohibited in each zone is chapter 30.22 SCC. Baker relies on the provision which states that uses “shall be established upon legally created lots that conform to current zoning requirements or on legal nonconforming lots.” SCC 30.22.030 (emphasis added). Baker contends this use provision must be read to authorize development of all permitted uses on any legal nonconforming lot because the Bulk Matrix does not speak to the uses permitted on lots of substandard size. But the fact that the Bulk Matrix chapter limits dimensions, while the use chapter generally limits uses, does not manifest a legislative intent to make the use limitations modify the dimensional limitations. Specifically, the fact that duplexes are a permitted use in the R-5 zone does not modify the requirement that a lot must be at least 200,000 square feet in order to have a duplex built upon it.

Further, the Bulk Matrix does not just establish minimum lot size. It also sets the dimensional, setback, and building height requirements for all lots and structures. Thus, the code specifies that as a general rule structures cannot be built on lots smaller than 200,000 square feet, even if the lot was legally created before the present minimum lot size was established. Baker's claim that Bulk Matrix requirements do not apply to substandard lots would also eliminate the building height and setback requirements on such lots. His interpretation goes against the plain meaning of the code's restriction on the building height of all structures and the minimum setbacks for placement of those structures.

In short, the requirements of the Bulk Matrix are nowhere modified to permit development of duplexes on substandard lots. The code is not ambiguous. The only reasonable interpretation of the code is that it prohibits development of duplexes on substandard lots.

Baker argues that ambiguity in the ordinance should be resolved by turning to principles of statutory construction, including construing it narrowly in favor of landowners; construing it to avoid an unconstitutional result; construing it with deference to the planning director; construing it in accordance with the county's past practice; and construing it to avoid an absurd result. Having concluded that the legislative intent can be determined from the language of the ordinance, we need not utilize the tools of statutory construction. We likewise do not address Watson's or Baker's arguments that the trial court erred by denying admission of evidence that would be relevant only if the code were

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ambiguous

and in need of construction.

Affirmed.

Becker, J.

WE CONCUR:

Leach, J.

Grosse, J